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**NEW MEXICO
ENVIRONMENT DEPARTMENT**

Surface Water Quality Bureau
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JAMES KENNEY
Cabinet Secretary Designate

Original via UPS-Copy via Electronic Mail

January 23, 2019

Mr. Charles Maguire, Director
Water Quality Protection Division (6WQ)
U. S. Environmental Protection Agency
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Re: State Certification

Dear Mr. Maguire:

Enclosed, please find the state certification for the following proposed National Pollutant Discharge Elimination System (NPDES) permit **NM0030872, City of Las Cruces-East Mesa Water Reclamation Facility**.

If any, comments and conditions are enclosed on separate sheets.

U.S. Environmental Protection Agency (USEPA) proposes to regulate discharges under the above-referenced NPDES Individual Permit. A state Water Quality Certification is required by the federal Clean Water Act (CWA) §401 to ensure that the action is consistent with state law (New Mexico Water Quality Act, sections 74-6-1 through 74-6-17, New Mexico Statutes Annotated (NMSA) 1978) and complies with state Water Quality Standards [*State of New Mexico, Standards for Interstate & Intrastate Surface Waters, New Mexico Water Quality Control Commission, 20.6.4 New Mexico Administrative Code (NMAC)*], the Water Quality Management Plan/Continuing Planning Process, including Total Maximum Daily Loads (TMDLs), and the Antidegradation Policy.

Pursuant to State regulations for permit certification (Section 20.6.2.2001 NMAC), USEPA jointly with NMED issued a public notice of the draft permit and announced a public comment period posted on the NMED web site at www.nmenv.state.nm.us/swqb/WQA/Notice on November 24, 2018. The NMED public comment period ended on January 7, 2019. NMED received comments from the City of Las Cruces, which were considered in this certification.

Sincerely,

/s/ Shelly Lemon

Shelly Lemon, Bureau Chief
Surface Water Quality Bureau

cc: (w/ enclosures)

Ms. Evelyn Rosborough, USEPA (6WQ-NP) via e-mail

Mr. Brent Larsen, USEPA (6WQ-PP) via e-mail

Tung Nguyen, USEPA (6WQ-PP) via e-mail

Joshua Rosenblatt, City of Las Cruces via e-mail

Ms. Anne Idsal, Regional Administrator
Environmental Protection Agency
1445 Ross Avenue
Dallas, TX 75202-2733

January 23, 2019

STATE CERTIFICATION

RE: **NM0030872- City of Las Cruces-East Mesa Water Reclamation Facility**

Dear Ms. Idsal:

The New Mexico Environment Department has examined the proposed NPDES permit above. The following conditions are necessary to assure compliance with the applicable provisions of the Clean Water Act Sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law. Compliance with the terms and conditions of the permit and this certification will provide reasonable assurance that the permitted activities will be conducted in a manner which will not violate applicable water quality standards and the water quality management plan and will be in compliance with the antidegradation policy.

The State of New Mexico

- ☒ (X) certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law
- ☐ () certifies that the discharge will comply with the applicable provisions of Sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act and with appropriate requirements of State law upon inclusion of the following conditions in the permit (see attachments)
- ☐ () denies certification for the reasons stated in the attachment
- ☐ () waives its right to certify

In order to meet the requirements of State law, including water quality standards and appropriate basin plan as may be amended by the water quality management plan, each of the conditions cited in the draft permit and the State certification shall not be made less stringent.

The Department reserves the right to amend or revoke this certification if such action is necessary to ensure compliance with the State's water quality standards and water quality management plan.

Please contact Sarah Holcomb at (505) 827-2798, if you have any questions concerning this certification. Comments and conditions pertaining to this draft permit are attached.

Sincerely,

/s/ *Shelly Lemon*

Shelly Lemon
Bureau Chief
Surface Water Quality Bureau

City of Las Cruces-East Mesa Water Reclamation Facility
State Comments on the Proposed NPDES Permit
NM0030872
January 23, 2019

The following revisions are necessary to ensure that discharges allowed under the National Pollutant Discharge Elimination System (NPDES) permit protect State of New Mexico water quality standards (WQS) adopted in accordance with §303 of the Clean Water Act (CWA) and the New Mexico Water Quality Act [NMSA 1978, §§ 74-6-1 to -17]. State of New Mexico (State) WQS are published in the document entitled Standards for Interstate and Intrastate Surface Waters, New Mexico Water Quality Control Commission (WQCC), 20.6.4 New Mexico Administrative Code (NMAC) as amended by the WQCC and approved by the United States Environmental Protection Agency (EPA or USEPA) as of August 11, 2017.

NPDES regulations at 40 CFR 122.44(d)(1)(i) require that permit *limitations must control all pollutants or pollutant parameters... which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard...*

20.6.4.15 NMAC Subsection C

If a use attainability analysis based on the department's hydrology protocol (latest edition), approved by the commission, demonstrates to the satisfaction of the department that Section 101(a)(2) uses are not feasible in an ephemeral water body, the department shall post the use attainability analysis on its water quality standards website and notify its interested parties list of a 30-day public comment period. After reviewing any comments received, the department may proceed by submitting the use attainability analysis and response to comments to region 6 EPA for technical approval. If technical approval is granted, the water shall be subject to 20.6.4.97 NMAC. The use attainability analysis, the technical approval, and the applicability of 20.6.4.97 NMAC to the water shall be posted on the department's water quality standards website. The department shall periodically petition the commission to list ephemeral waters under Subsection C of 20.6.4.97 NMAC and to incorporate changes to classified segments as appropriate.

20.6.4.900 CRITERIA APPLICABLE TO EXISTING, DESIGNATED OR ATTAINABLE USES UNLESS OTHERWISE SPECIFIED IN 20.6.4.97 THROUGH 20.6.4.899 NMAC

H. Aquatic life: *Surface waters of the state with a designated, existing or attainable use of aquatic life shall be free from any substances at concentrations that can impair the community of plants and animals in or the ecological integrity of surface waters of the state. Except as provided in Paragraph (7) of this subsection, the acute and chronic aquatic life criteria set out in Subsections I, J, K and L of this section and the human health-organism only criteria set out in Subsection J of this section are applicable to all aquatic life use subcategories. In addition, the specific criteria for aquatic life subcategories in the following paragraphs apply to waters classified under the respective designations.*

6) *Marginal warmwater: dissolved oxygen 5 mg/L or more*

Conditions of Certification:

1. none

Comments that are not Conditions of Certification:

1. The process detailed in 20.6.4.15 NMAC Subsection C must be completed in order to classify a waterbody under 20.6.4.97 NMAC as Ephemeral. Until such time, this AU will remain under 20.6.4.98 NMAC Intermittent Waters.
2. Implementation of Dissolved Oxygen (DO) Criterion is applicable to all POTWs, NMED does not support removal of monitoring.